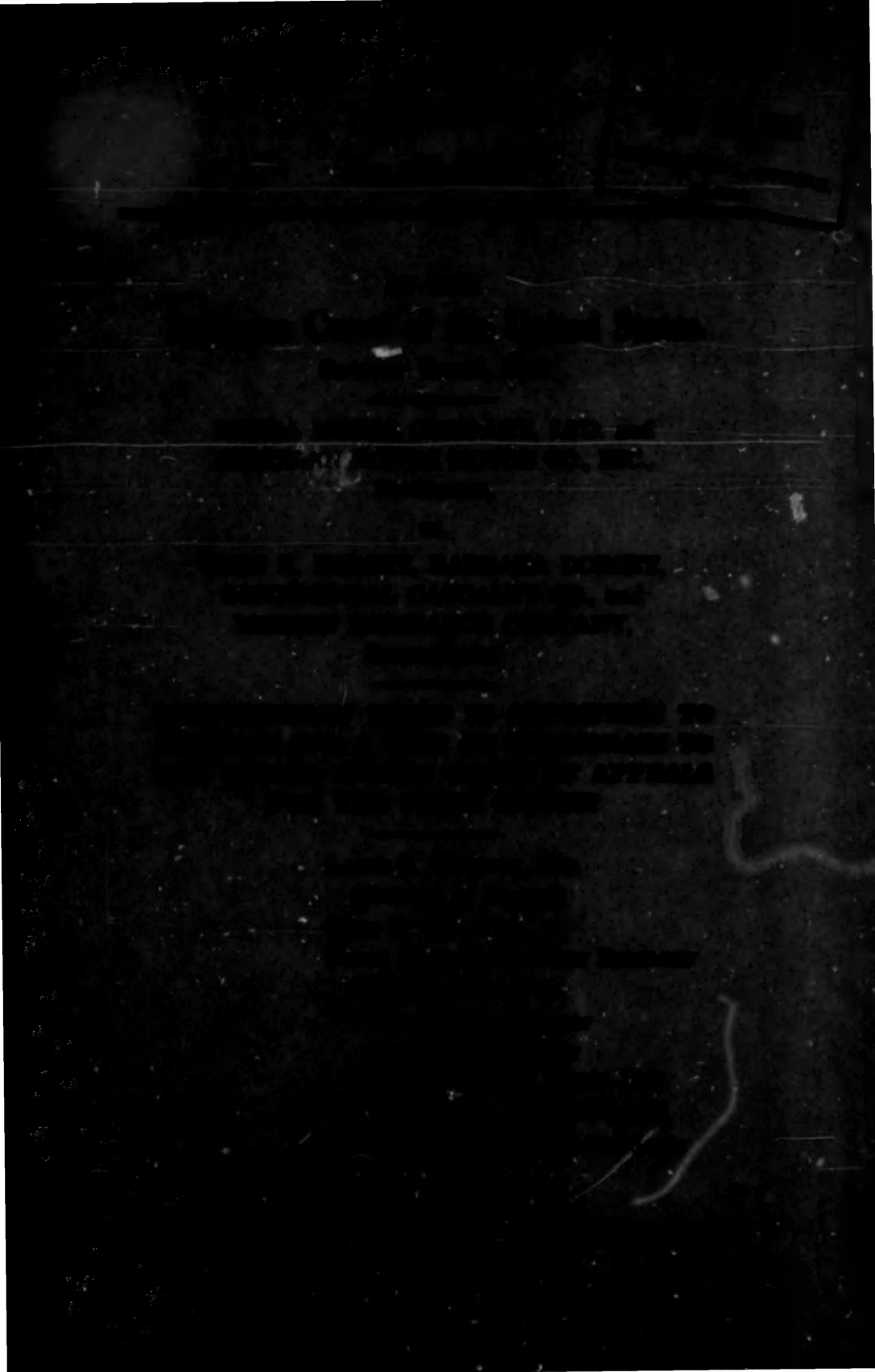

QUESTIONS PRESENTED

Respondents, GLEN K. DORSEY and BARBARA DORSEY (hereinafter "Respondents"), are not satisfied with what petitioners, HONDA MOTOR COMPANY, LTD. and AMERICAN HONDA MOTOR CO., INC. (hereinafter "Petitioners" or "Honda"), claim to be the questions presented. As phrased by petitioners, the questions contain material misstatements concerning the proceedings below and the rulings of the Court of Appeals. The fact that petitioners had to go to such lengths underscores the true lack of any jurisdictional basis for this Petition. Respondents submit that when accurately stated, the questions are:

1. Where, while an appeal was pending, the state court of last resort issued an opinion dealing with the recoverability of punitive damages, the Court of Appeals expressly requested the decision be addressed, and the Court of Appeals thereafter ruled on the applicability of that decision, did the Court of Appeals violate 28 U.S.C. §1652, the Rules of Decision Statute?

2. Where plaintiff established both fault and reckless conduct on the part of Honda, was it a denial of due process to impose punitive damages on Honda?

3. When the Court of Appeals modified its opinion on rehearing after new issues had been briefed, does it depart from the accepted and usual course of judicial proceedings so as to call for this Court to exercise its supervisory power?

4. May punitive damages be imposed against an automobile manufacturer who acts in reckless disregard for the safety of users of its vehicles, notwithstanding that it complied with federal regulations that were not applicable to the claimed vehicle defect?

5. Should Rule 49 damages be awarded in this case because of the frivolous and scandalous nature of the petition?

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No. 81-2252

IN THE

Supreme Court of the United States

October Term, 1981

HONDA MOTOR COMPANY, LTD. and
AMERICAN HONDA MOTOR CO., INC.,
Petitioners,

vs.

GLEN K. DORSEY, BARBARA DORSEY,
CONTINENTAL CASUALTY CO., and
MISSION INSURANCE COMPANY,
Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioners, Honda Motor Company, Ltd. and American Honda Motor Co., Inc., seek a petition for certiorari in a last ditch effort to escape the consequences of marketing their product in reckless disregard of known safety defects. It is respondents' position that the petition is without merit and should be denied. Respondents further state that not only is the petition without merit, but it is also frivolous within the meaning of Rule 49(2) and, as a result, damages should be assessed against petitioners.

The reasons and arguments in support of respondents' position follow.

STATEMENT OF THE CASE

In their Statement of the Case, petitioners twist and distort the proceedings and evidence below. Respondents do not accept petitioners' statement and submit that when accurately presented, the statement is as follows:

Glen Dorsey was involved in an automobile collision of only moderate impact—well below the universally accepted safety design criteria of both the automotive industry and Honda. In a properly designed car, the passenger compartment would not have failed and Glen Dorsey would have sustained no serious injuries. Yet he was left a cripple for life.

By reason of its own internal testing, Honda had actual knowledge as early as 1967 that the AN 600—the model involved in this case[1]—was defective. From 1967 on, the testing showed a constant pattern of defective and unsafe design. Yet Honda did nothing to correct the defects pointed out by its engineers nor did it warn consumers of the dangers inherent in the operation of the vehicle. And, when it exported the car to this country and offered it for sale, Honda represented it as being a safe vehicle.

Honda continued its safety claims in this litigation. It claimed that the occupant protection of the AN 600 was equivalent to American cars. This was achieved, according to the Honda engineers, by fortifying the passenger compartment with "bones". Bones were described as additional members added to reinforce and increase strength. To test the truth of this claim, an identical AN 600 was dissected. Not a single bone was present! Indeed, by

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1. The AN 600 was sold in the United States by Honda for only two years. The Dorsey vehicle was a 1971 model that was purchased in 1972 but was actually manufactured on June 11, 1971. After 1972, Honda discontinued production of the AN 600.

the post trial motions, Honda's counsel conceded that there was no such reinforcement.

Throughout discovery and trial, Honda accepted full responsibility for the design of the AN 600. That was admitted in Honda's answer and reiterated in discovery and the pretrial stipulation. In discovery, Honda produced both documents and witnesses from its wholly-owned design subsidiary, Honda R&D, in response to discovery requests directed to Honda. Even at trial, Honda produced Honda R&D employees to testify on its behalf. Indeed, at trial Honda had *no objection* when Plaintiff offered into evidence the Honda R&D test reports that it had previously produced. Honda preserved no point for appellate review in this regard.

The vehicle tests introduced into evidence revealed that the AN 600 failed to meet Honda's own internal standards which were identical to and obviously developed in anticipation of the federal regulations governing occupant protection which Honda knew were going to become effective some six months after the Dorsey vehicle was manufactured. Despite the fact that Honda was aware that this standard was going into effect and despite its knowledge that the vehicle failed to meet the standard, Honda argues that because it complied with other standards unrelated to the defect at issue, its compliance should somehow operate to insulate it from the recklessness found by the jury. That contention is so lacking in merit that it was never even raised in the district court. At trial, Honda did not articulate any such ground in its motion for directed verdict, requested no jury instruction on the point and conceded at the charge conference that compliance did not mean that it did not do anything wrong. It was not until the appeal that Honda advanced its so-called compliance argument.

Following trial, a new issue surfaced in the case. This issue is central to understanding the action of the Court of Appeals in deleting a portion of its original opinion. The issue is whether Honda's insurers are liable to pay the punitive portion of the jury's verdict.

In Florida, one cannot insure against liability for punitive damages based upon one's own conduct. However, if one is held punitively liable solely on a vicarious basis, then insurance may cover the punitive verdict. It was in this context that, following the jury's verdict, Honda raised the claim that it was being held vicariously liable for punitive damages. The district judge ruled that the insurance did not cover the punitive award and that ruling was the basis of a cross-appeal by Honda.

At no time throughout the entire course of discovery and trial did Honda ever raise the arguments that are advanced here—i.e., that it should not be held liable for punitive damages due to the allegedly vicarious relationship with its subsidiary or that the trial below resulted in a denial of due process.

While the appeal was pending below, the Florida Supreme Court decided *Mercury Motors Express, Inc. v. Smith*, 393 So. 2d 545 (Fla. 1981), which adopted one line of Florida cases[2] which held that before a principal could be held vicariously liable for punitive damages based upon the acts of its employee, the principal must be guilty of "some fault." Notwithstanding the earlier Florida case law, in the Court of Appeals, Honda did not initially raise the *Mercury Motors* argument that it now relies on here.

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2. The *Mercury Motors* decision did not represent a new rule of Florida law. In *Mercury Motors*, the Florida Supreme Court adopted the rationale of *Alexander v. Alterman*, 350 So. 2d 1128 (Fla. 1st DCA 1977). The *Alexander* case was decided nearly two years before the jury trial in this case.

In its main brief, Honda still referred to "the *Honda* testing and design program" and "the testing program carried on by *Honda*" (emphasis supplied). Even after *Mercury Motors* was decided, Honda did not seek to rely upon it or bring it to the Court's attention. It was not until Honda's petition for rehearing, filed nine months after the *Mercury Motors* decision, that Honda raised this contention for the first time.

In the decision which Petitioners seek to have reviewed, the Court of Appeals reversed the district court's judgment n.o.v. on punitive damages. In so doing, the Court noted:

> The evidence permitted the jury to find that defendant knew that it was creating unreasonable risks not necessarily incident to the unique design desired by the purchaser and received recommendations for eliminating or minimizing these unreasonable risks but did not accept them. 655 F.2d at 657.

Significantly, one month before the Court of Appeals rendered its decision, one of the Florida courts of appeals handed down a decision of first impression on punitive damages in product liability actions. *American Motors Corp. v. Ellis*, 403 So. 2d 459 (Fla. 5th DCA 1981), *cert. denied*, ... So. 2d ..... Although the Court of Appeals had already reached its own conclusion which was in accord, it noted the *American Motors* decision in a footnote. 655 F.2d at 658.

The Court of Appeals also disposed of the insurance coverage issue. It remanded that issue to the district court for determination as to whether Honda's culpability was based on its own conduct or whether it was simply being held vicariously liable for the acts of its wholly-owned subsidiary. On that issue, the Court noted:

> Neither Continental nor the district court points us to substantial evidence that any responsible person of Honda was reckless or even that any such person had knowledge of the results of the tests conducted by Honda R&D or of the recommendations of Honda R&D employees that the design of the AN 600 be changed. The liability of Honda is, therefore, not based upon its own acts but upon those of Honda R&D and its employees, for which Honda in the pre-trial order accepted responsibility. 655 F.2d at 660.

Following the decision of the Court of Appeals, in its petition for rehearing based largely on the above language, Honda for the first time raised the contention that it was not actively at fault, was being held purely vicariously liable and, therefore, it could not be subject to punitive damages. The Court of Appeals directed that respondents address that argument.

In their response respondents identified specific items of record evidence demonstrating reckless conduct on Honda's own part. Included in that evidence were vehicle tests that revealed the defective nature of the passenger compartment AN 600. These tests were conducted by Honda itself, as opposed to Honda R&D. Also included were Honda technical engineering papers.

In light of this evidence, the Court of Appeals deleted that portion of its original opinion on the insurance issue which stated Honda's liability was not based upon its own acts. The Court of Appeals did not ignore or fail to follow controlling state law. The Court of Appeals did not change the burden of proof nor act to deny Honda due process.

SUMMARY OF ARGUMENT

This is a products liability, diversity action decided under a unique set of facts and the substantive law of the State of Florida. It presents no federal or constitutional issues of any significance whatsoever. This case meets none of the Rule 17 criteria and petitioners have failed to raise even a colorable basis or justification for this Honorable Court to exercise discretionary jurisdiction.

Petitioners advance four grounds upon which they contend this Court should take jurisdiction.

The principal argument advanced here, to the effect that Honda is being improperly held vicariously liable for the acts of its subsidiary, was not preserved in the district court. Indeed, Honda stipulated any such issue away by agreeing that it was responsible for the acts of its subsidiary. Furthermore, under the controlling state law standard, there was more than sufficient evidence to support the imposition of punitive damages on Honda—both for its own acts and the acts of its subsidiary. Far from ignoring controlling state law, as contended by petitioners, the Court of Appeals expressly recognized that law and determined that, under the facts of this case, it did not absolve Honda from punitive damages.

As to petitioners' second point, the Court of Appeals in no way acted improperly or denied Honda due process. To the contrary, the Court of Appeals acted in an entirely appropriate and logical manner, in full accord with controlling law.

Thirdly, petitioners launch a vitriolic, personal attack on the Court below because it amended its opinion following *petitioners'* petition for rehearing. This contention is frivolous. The Court, on rehearing, merely deleted a por-

tion of its original opinion after the parties had briefed certain issues which had not been raised during the main appeal.

The safety standards, with which petitioners claim compliance, do not address the defect involved in this case. Petitioners failed to comply with their own standards that did cover the defect here. In either event, petitioners' argument flies directly in face of the statute which mandates that compliance with the regulations "does not exempt any person from any liability under common law." This so-called compliance argument was also never raised in the district court.

When petitioners' arguments are thus exposed there is no legal substance. The petition amounts to nothing more than a vicious, scandalous attack on the Court of Appeals. It is frivolous and without merit and damages should be awarded.

THE WRIT SHOULD NOT BE GRANTED

Petitioners, by sophistry and verbal gymnastics, have twisted the decision below in an effort to find some conceivable reason why this Court should accept jurisdiction. Respondents respectfully submit that none of the reasons cited even remotely approach a proper case for certiorari. Because of what respondents perceive as a totally unmeritorious petition, respondents seek Rule 49(2) damages. This will be addressed more fully at the conclusion of this brief.

1. There Is No Conflict Between the Decision Below and the Decisions of This Court.

Respondents do not take exception to the requirement that federal appellate courts must apply controlling

state law as it exists at the time of appeal. But the decision below does not conflict, either directly or indirectly, with that principle. In fact, the Court of Appeals followed and applied not just one, but two very recent controlling state law decisions, both of which were rendered while the case was pending in the appellate court.

Respondents do take exception, however, to the manner in which petitioners have presented this argument. Petitioners contend that because the Court of Appeals deleted a portion of its opinion dealing with the issue of insurance coverage that it automatically follows that the Court failed to apply the *Mercury Motors* decision.

Petitioners blithely ignore the fact that the Court of Appeals expressly considered *Mercury Motors*. Petitioners also ignore the fact, as pointed out by the Court of Appeals, that in the district court the petitioners waived their opportunity to raise the *Mercury Motors* argument, stipulated to acceptance of responsibility for the acts of its subsidiary, made no objection to Honda R&D evidence and at least contributed to "blurring" any distinction between Honda and Honda R&D.[3]

Mercury Motors requires that there be "some fault" on the part of a principal before it can be held vicariously liable for punitive damages due to the actions of its agent.

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3. Parties are not allowed on appeal to undo the consequences of strategic and tactical decisions made at trial. *See, e.g., Jenkins v. General Motors Corp.*, 446 F.2d 377 (5th Cir. 1971) (manufacturer's tactical decision not to object to plaintiff's evidence on mental anguish and pain and suffering constituted waiver which could not be considered on appeal; *Wisconsin Barge Line, Inc. v. Coastal Marine Transport, Inc.*, 414 F.2d 872 (5th Cir. 1969) (failure to raise breach of warranty in answer, pretrial order, or at trial precluded its consideration by Court of Appeals); *United States v. Sinor*, 238 F.2d 271 (5th Cir. 1956) (appellee unsuccessful in attempt to avoid binding effect of a strategic decision made at trial, and a pretrial stipulation entered into as part of that strategy).

In the pretrial stipulation Honda agreed that as manufacturer it had a duty to warn of defects in the automobile at issue. The case was tried, in substantial part, upon Honda's failure to warn. The jury specifically found that Honda was negligent by failing to warn. That finding, by itself, was sufficient to meet the "some fault" test of *Mercury Motors.*

Moreover, even if Honda had not conducted any tests and had no knowledge of the results of the Honda R&D tests, the *Mercury Motors* fault requirement would in any event be satisfied by Honda's failure to conduct its own tests. Under Florida law, failure to make reasonable tests constitutes negligence. *Barfield v. Atlantic Coast Line R.R. Co.*, 197 So. 2d 545 (Fla. 2d DCA 1967). Such negligence would constitute still further evidence of fault on the part of Honda.

Thus, given the record evidence of "some fault" on Honda's part, this case fits squarely wtihin the type of situation when, according to *Mercury Motors*, a principal may be held liable for punitive damages based upon the acts of its agent. Even if Honda had not stipulated to its responsibility for the acts of R&D, under *Mercury Motors* the same result would have followed and the result in state court would have been identical.

Interestingly, petitioners' argument is premised on language which was *deleted* by the Court of Appeals. For all intents and purposes, the language upon which Honda bases its claim of "conflict"—i.e., the part of the opinion which comments on the failure of the district court or the insurance company to point to evidence of willful conduct on Honda's part—no longer exists from a legal or precedential standpoint and cannot, therefore, lead to the "confusion and injustice" conjured up by Honda.

The reason the Court deleted the language cited by Honda is clear. In its petition for rehearing, Honda, for the first time, cited the Fifth Circuit to the *Mercury Motors* case and to the language of the Court's original opinion in which it noted, in connection with the insurance coverage issue, that neither the district court nor Continental (the insurance company) pointed to evidence of willful conduct on Honda's part. The Court requested respondents to describe what evidence of fault was present in the record on the part of Honda, as opposed to its wholly-owned subsidiary, Honda R&D. In reply, respondents pointed out the substantial evidence of misconduct on Honda's own part. Thereafter, the Court, having been advised for the first time of the record evidence of misconduct on Honda's part, deleted from the insurance coverage portion of its opinion the language which would have precluded that issue from being properly retried. At the same time, the Court of Appeals noted that, as to the main case, the issue had been effectively waived by Honda. In so doing, the Court avoided the very "confusion" which Honda contends exists as a result of the language in the main opinion.

In light of the Court of Appeals' modification of its initial decision, Honda's contentions that the appellate court below 1) "neither obeyed nor denied the obligation of *Mercury Motors*" (PC 6)*; 2) "recognized that its decision conflicted with the law of Florida" (PC 7); and "ignore[d] the decisions of the state supreme court" (PC 8) border on the irresponsible and patently fail to establish any basis for this Court's discretionary jurisdiction.

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*PC indicates Petition for Certiorari.

2. The Decision of the Court of Appeals Raises No Due Process Questions and in No Way Shifts the Burden of Proof.

Honda's entire argument under this point is based on its statement that:

> In its original opinion, the Court of Appeals said that the claim that there was faulty conduct on the part of Honda was "not supported by the evidence." 655 F.2d at 660. (PC 9)

What Honda once again remarkably fails to acknowledge is that the very language upon which it relies was *deleted by the Court* on rehearing. The fact that Honda is unable to offer this Honorable Court any better justification for accepting certiorari than some language in the original opinion below, which the Court itself deleted, is perhaps the best indication of the petition's merit.

Having built its foundation upon the deleted language, Honda contends this Court should accept jurisdiction because the deleted language ". . . removes from all future plaintiffs in the district courts of Florida the burden of proving some fault on the part of a principal in order to recover punitive damages." (PC 10.) Such a statement is inaccurate and misleading sophistry. Far from removing plaintiffs' burdens, the Court below explicitly recognized the holding of *Mercury Motors* to the effect that

> . . . before an employer may be held vicariously liable for punitive damages under the doctrine of respondeat superior there must be "some fault" on the employer's part.

670 F.2d at 22. The Court of Appeals, having explicitly recognized the rule of law for which *Mercury Motors* stands, left no doubt as to the law with which "all future plaintiffs in the district court of Florida" must comply in

order to recover punitive damages. It is inconceivable how petitioners could, in good faith, argue to the contrary.

In this case, the jury found that there was negligence, i.e., "fault", on the part of Honda. Additionally, there was substantial evidence of recklessness by Honda. As noted by the Court of Appeals, Honda knowingly ignored the safety deficiencies in its product. 655 F.2d at 656.

Aside from being unable to deny or explain away the record evidence of fault and recklessness on its part, Honda also continues to ignore the fact that it freely admitted its responsibility for the design of the vehicle and further stipulated that "in legal effect the acts of Honda R&D and its employees *were its own acts.*" 670 F.2d at 22. (Emphasis supplied.) Given the record evidence of fault and Honda's own stipulation, the decision below was eminently correct.

The opinion of the Court below obviously raises no due process questions of any sort and in no way affects or alters traditional concepts governing the burden of proof.

3. There Is No Necessity Whatsoever for This Honorable Court to Exercise Its Supervisory Power in This Case.

Petitioners seek to incite this Court to grant certiorari under its supervisory capacity by accusing the Court of Appeals of exercising "raw judicial power" (PC 10) and making a "transparent effort" (PC 11) to avoid state law. There is no way that such rhetoric can be justified in this case.

It is apodictic that a Court of Appeals has the power, authority, and indeed, even the duty, to clarify, modify or completely change its decisions when the occasion war-

rants it. It is for this reason that provisions are made for petitions for rehearing at the appellate level.

There is nothing sinister or "extraordinary" (PC 10) about the Court of Appeals' deletion of language finding no evidence of Honda's fault from that portion of its original opinion directed to the insurance coverage issue. That action was not only natural but obligatory once respondents had specifically identified the evidence. The Court of Appeals logically ruled that Honda could not use *Mercury Motors* as an "escape hatch" where the record abounds with evidence of fault, Honda had accepted responsibility for the acts of its subsidiary and Honda had not preserved that point for appellate review. By the same token, since respondents had in their response to the rehearing petition pointed out the evidence of Honda's fault and recklessness for the first time, the Court could not let stand its original statement in the insurance coverage portion of the opinion to the contrary.

In the present case, the Fifth Circuit did precisely what it should have. Having been apprised of the record evidence of Honda's fault, the Court corrected its earlier opinion to remove any suggestion that the record lacked such evidence. The Court of Appeals in no way departed from the accepted and usual course of judicial proceedings. Petitioners respectfully submit that the Court should be commended, rather than criticized for taking such action.

4. The Court Below Correctly Applied the Federal Statute Which Expressly States That Compliance With Government Standards Does Not Exempt a Manufacturer From Any Liability Under Common Law.

Under this point, Honda once again conceals the most important factor necessary for the Court's consideration.

Honda advises the Court that it had complied with government standards dealing with the seat belt and seat assembly. From there, it argues that a jury finding that a manufacturer acted willfully and wantonly and its awarding of punitive damages against the manufacturer will ". . . [frustrate] the congressional purpose of uniform national regulation."

Petitioners do not, however, disclose that the standards to which they refer were in their embryonic stages and not comprehensive. Most fundamentally, the standards then in effect did not deal with the claimed defect in this case. As the Court of Appeals correctly observed, respondents' case was premised upon a defectively designed passenger compartment which failed to properly protect occupants in the event of a crash. It was the design of the vehicle *as a whole*, not particular components, which formed the basis for respondents' case.

Since there was no comprehensive standard in effect at the time of manufacture of the Dorsey vehicle, the essence of Honda's "compliance" argument becomes a nonstandard argument—so long as the automotive industry can delay implementation of a standard,[4] an automotive manufacturer cannot be subject to punitive damages. Stated another way, what Honda is really contending is that absent violation of a safety standard, a manufacturer cannot be liable for punitive damages. This is not what the statute provides.

The National Traffic and Motor Vehicle Safety Act, 15 U.S.C. §1397(c), specifically provides that compliance with

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4. Prior to January 1, 1972, the minimum standards for motor vehicle safety performance required by 15 U.S.C. §§1391 and 1392 constituted a fledgling regulatory scheme at best. Many delays had been encountered in bringing the standards on line due to the intense resistence of the automotive industry. Ralph Nader, Unsafe At Any Speed (1965).

the federal regulations "does not exempt any person from *any* liability under common law (emphasis added)." The phrase "any liability" means just that—any liability for compensatory or punitive damages. Had Congress intended compliance to negate any liability for punitive damages, it would have been a simple matter to have so stated.

In its petition, on page 12, Honda cites this Honorable Court to the following portion of Senate Report No. 1301:

> [T]he federal minimum safety standards need not be interpreted as restricting state common law standards of care.

Honda fails, however, to cite the Court to the sentence which follows that quoted above:

> Compliance with such standards would thus not necessarily shield any person from product liability at common law.

Honda's position is even more absurd when viewed in light of the fact, which Honda conveniently failed to mention, that in early 1971, the government had finally succeeded in promulgating a comprehensive standard which did deal with the claimed defect in this case. However, the effective date of that standard—MVSS 208—was postponed until January 1, 1972, and it was therefore not applicable to the Dorsey vehicle.

Although not officially applicable to the Dorsey vehicle, Honda had direct knowledge of the MVSS 208 requirements and even purported to use that standard as its own internal standard. In testing the AN 600 Honda learned that it failed to meet this important standard. At trial there was direct evidence of the failure of the AN 600 to meet the requirements of MVSS 208.

Thus, for Honda to contend that it complied with governmental standards—the main one of which was not even in effect at the time—and that such compliance should preclude a finding of willful and wanton conduct is almost laughable. Taken together, respondents respectfully submit that it is clear that, by the legislative history as quoted above and from the clear and unambiguous language of §1397(c), compliance with standards—especially compliance with standards which do not address the defect at issue—was never intended by Congress to shield a manufacturer from liability for punitive damages.

It is, once again, noteworthy that Honda fails to quote any portion of the decision below dealing with the compliance issue. Respondents submit that the following portion of the Fifth Circuit opinion succinctly and accurately analyzes and rejects the identical contentions raised in that Court.

> Moreover, the federal Motor Vehicle Safety Act Standards are unrelated to several of the design deficiencies developed by the plaintiffs' evidence. . . . While the regulations governing seats and seat belts are relevant to portions of the plaintiffs' case, *none of the regulations applicable to Dorsey's car governed the strength of the A pillar or the overall ability of the passenger compartment to protect occupants in a crash.* Furthermore, plaintiffs' expert explained that compliance with the standard governing seat belt stretch would be meaningless in terms of safety if the car was designed to place the driver's head so close to the front of the passenger compartment that it would be vulnerable in a crash. In short, we believe that Florida would not hold as a matter of law that compliance with the applicable regulations, which were far from comprehensive, precluded any finding of recklessness no matter

> how egregious Honda's conduct had been in ignoring tests that indicated design flaws of a different nature.

655 F.2d at 656-7 (emphasis added).

Finally, Honda's argument that the decision below somehow violates 15 U.S.C. §*1392(d)*, precluding states from establishing conflicting safety standards, is without merit. Obviously what the statute contemplates is proscribing state legislatures from enacting fifty different sets of standards which would make compliance by manufacturers difficult. Equally obvious is the fact that §1392(d), in light of the legislative history and §1397(c), in no way was intended to abrogate or affect, in any manner, a manufacturer's liability under state common law.

In summary, all that the Fifth Circuit did on the issue of compliance is to uphold the clear and unambiguous language of §1397(c) which provides that a manufacturer's liability under the common law is unaffected by the enactment of the safety standards.

RULE 49 DAMAGES

Rule 49(2) authorizes this Court to award appropriate damages when a petition for writ of certiorari is frivolous. Respondents respectfully submit that this petition falls within that category.

This petition is not fairly presented. In an effort to secure the granting of the writ, petitioners have launched a vitriolic attack on the Court of Appeals and misstated and omitted material aspects of the proceedings below. The unjustified attack on the Court of Appeals is scandalous and should be disregarded.

This case does not involve even a hint of a constitutional issue. The Court of Appeals has not run roughshod over petitioners. To the contrary, the Court of Appeals acted in a logical, rational manner consistent with controlling state and federal law. The tactics of petitioners should not go unaddressed.

CONCLUSION

The opinion below does not invoke conflicts between appellate courts or conflict with federal statutes or deal in any way with matters of great public importance.

Accordingly, respondents respectfully submit that this Honorable Court should deny Honda's petition for certiorari and award damages to respondents.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 21 day of July, 1982 to: Carey A. Randall, Esquire, Walton, Lantaff, Schroeder & Carson, 900 Alfred I. duPont Building, 169 East Flagler Street, Miami, Florida 33131; Joel R. Teague, Esquire, 2801 Ponce de Leon Boulevard, Coral Gables, Florida 33134; Anthony M. Lanzone, Esquire, 26 Broadway, New York, New York 10004; Thomas B. DeWolf, Esquire, DeWolf, Ward, Morris Wohlust, Jontz & O'Donnell, 1475 Hartford Building, 200 East Robinson Street, Orlando, Florida 32801; John Edwin Fisher, Esquire, Akerman, Senterfitt & Eidson, Post Office Box 231, Orlando, Florida 32802; Marion R. Shepard, Esquire, Mathews, Osborne, Ehrlish, McNatt, Gobelman & Cobb, 1500 American Heritage Building, Jacksonville, Florida 32202; and William H. Crabtree and Edward P. Good, Motor Vehicle Manufacturers Association of the U.S., 300 New Center Building, Detroit, Michigan 48202; Aubrey V. Kendall, P.A., Edwart T. O'Donnell, Mershon, Sawyer, Johnston, Dunwody & Cole, Suite 1600, Southeast Bank Building, Miami, Florida 33131

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